
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JOSEPH LOWRY, Individually and on §
Behalf of All Others Similarly Situated, §

Plaintiff(s), §

v. §

CITY OF LA MARQUE, TEXAS; §
KEITH BELL, in his individual §
capacity and in his official capacity; §
KIMBERLEY YANCY, in her §
individual capacity and in her official §
capacity; and RANDALL ARAGON, in §
his individual capacity and in his official §
capacity, §

Defendant(s). §

No. 3:22-cv-00112

Jury

**PLAINTIFF JOSEPH LOWRY'S
RESPONSE IN OPPOSITION TO DEFENDANTS'
RULE 12(b)(6) MOTION TO DISMISS**

For the reasons explained below, Defendants Rule 12(b)(6) Motion to Dismiss (Doc. 17) should be denied as moot.

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Defendants moved to dismiss Plaintiff Joseph Lowry's Second Amended Complaint (Doc. 15) under Rule 12(b)(6) for failure to state a claim upon which relief has been granted. (*See generally*, Defs.' Mot. Dismiss (Doc. 15).) After the motion was

filed, Lowry amended his complaint with the consent of the opposing parties. *See*, Fed. R. Civ. P. 15(a)(2). An amended complaint supersedes the original complaint and renders Defendants’ Motion to Dismiss (Doc. 17) moot. *See*, *Griffin v. Am. Zurich Ins. Co.*, 697 F. App’x 793, 797 (5th Cir. 2017) (“Once filed, that amended complaint rendered *all earlier motions*, including [the plaintiff’s] motion for partial summary judgment, moot.” (emphasis added)); *Purkey v. Marberry*, 385 Fed. App’x 575, 579 (7th Cir. 2010); *Hymes v. AmCap Mortg., Ltd.*, No. H-19-515, 2019 U.S. Dist. LEXIS 66464, at *5-*6 (S.D. Tex. Apr. 18, 2019) (Rosenthal, J.) (collecting cases); *Barnes v. Birds Eye Foods LLC*, No. 1:10-cv-541, 2010 U.S. Dist. LEXIS 69579, at *3 (W.D. Mich. Jul. 12, 2010) (“An amended complaint filed after a motion to dismiss has been filed renders the motion to dismiss moot.” (citing *Bancoult v. McNamara*, 214 F.R.D. 5, 31 (D.D.C. 2003))).

* * *

For the reasons explained above, Defendants’ Motion to Dismiss (Doc. 17) should be denied as moot.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

As required by Fed. R. Civ. P. 5(a)(1), I certify that I served a copy of this document on all parties or their attorney(s) of record—who are listed below—in accordance with Fed. R. Civ. P. 5(b) on the date indicated as follows:

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- ☐ mail
- ☐ personal delivery
- ☐ leaving it at ☐ office ☐ dwelling
- ☐ leaving it with court clerk
- ☐ electronic means
- ☐ other means
- ☒ CM/ECF system

March 15, 2023

Date

s/ Curt Hesse

Curt Hesse